

*JS 44 (Rev. 12/07) (CAND Rev 1/10)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

AF HOLDINGS, LLC

DEFENDANTS

JOHN DOE

(b) County of Residence of First Listed Plaintiff N/A
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant N/A
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

PRENDA LAW, INC.
38 MILLER AVENUE, #263
MILL VALLEY, CA 94941
(415) 325-5900

Attorneys (If Known)

N/A

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-- Med. Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input checked="" type="checkbox"/> 423 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
			SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
			FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-- Third Party 26 USC 7609	
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
17 U.S.C. 101, et seq.

Brief description of cause:

An anonymous individual using a known IP address unlawfully infringed on Plaintiff's copyrighted works.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE ☐ EUREKA

DATE

11/21/11

SIGNATURE OF ATTORNEY OF RECORD

1 discovery, illegally reproduced and distributed Plaintiff's copyrighted Video by acting in concert via
2 the BitTorrent file sharing protocol and, upon information and belief, continues to do the same.
3 Plaintiff seeks a permanent injunction, statutory or actual damages, award of costs and attorney's
4 fees, and other relief.

5 6 THE PARTIES

7 3. Plaintiff AF Holdings LLC is a limited liability company organized and existing
8 under the laws of the Federation of Saint Kitts and Nevis. Plaintiff is a holder of rights to various
9 copyrighted works, and is the exclusive holder of the relevant rights with respect to the copyrighted
10 creative work at issue in this Complaint.

11 4. The unique copyrighted work at issue here is an adult video entitled "Sexual
12 Obsession" (the "Video").

13 5. Defendants' actual names are unknown to Plaintiff. Instead, each Defendant is known
14 to Plaintiff only by an Internet Protocol address ("IP address"), which is a number assigned to
15 devices, such as computers, connected to the Internet. In the course of monitoring Internet-based
16 infringement of its copyrighted content, Plaintiff's agents observed unlawful reproduction and
17 distribution occurring over IP address 71.198.194.113 via the Bit Torrent file transfer protocol.
18 Plaintiff cannot ascertain Defendant's actual identity without limited expedited discovery.

19 20 JURISDICTION AND VENUE

21 6. This Court has subject matter jurisdiction over the copyright infringement claim
22 under 17 U.S.C. §§ 101, *et seq.*, (the Copyright Act), 28 U.S.C. § 1331 (actions arising under the
23 laws of the United States), and 28 U.S.C. § 1338(a) (actions arising under an Act of Congress
24 relating to copyrights). This Court has supplemental jurisdiction over the civil conspiracy claim
25 under 28 U.S.C. § 1367(a) because it is so related to Plaintiff's copyright infringement claim, which
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1 scalability. For example, when a popular file is released (e.g. an illegal copy of the latest blockbuster
2 movie) the initial source of the file performs a one-to-one whole file transfer to a third party, who
3 then performs similar transfers. The one-to-one whole file transfer method can significantly delay
4 the spread of a file across the world because the initial spread is so limited.

5
6 12. In contrast, the BitTorrent protocol is a decentralized method of distributing data.
7 Instead of relying on a central server to distribute data directly to individual users, the BitTorrent
8 protocol allows individual users to distribute data among themselves. Further, the BitTorrent
9 protocol involves breaking a single large file into many small pieces, which can be transferred much
10 more quickly than a single large file and in turn redistributed much more quickly than a single large
11 file. Moreover, each peer can download missing pieces of the file from multiple sources—often
12 simultaneously—which causes transfers to be fast and reliable. After downloading a piece, a peer
13 automatically becomes a source for the piece. This distribution method contrasts sharply with a one-
14 to-one whole file transfer method.

15
16 13. In BitTorrent vernacular, individual downloaders/distributors of a particular file are
17 called peers. The group of peers involved in downloading/distributing a particular file is called a
18 swarm. A server which stores a list of peers in a swarm is called a tracker. A computer program that
19 implements the BitTorrent protocol is called a BitTorrent client. Each swarm is unique to a particular
20 file.

21
22 14. The BitTorrent protocol operates as follows. First, a user locates a small “torrent” file.
23 This file contains information about the files to be shared and about the tracker, the computer that
24 coordinates the file distribution. Second, the user loads the torrent file into a BitTorrent client, which
25 automatically attempts to connect to the tracker listed in the torrent file. Third, the tracker responds
26 with a list of peers and the BitTorrent client connects to those peers to begin downloading data from
27 and distributing data to the other peers in the swarm. When the download is complete, the BitTorrent
28

1 client continues distributing data to other peers in the swarm until the user manually disconnects
2 from the swarm or the BitTorrent client otherwise does the same.

3 15. The degree of anonymity provided by the BitTorrent protocol is extremely low.
4 Because the protocol is based on peers connecting to one another, a peer must broadcast identifying
5 information (i.e. an IP address) before it can receive data. Nevertheless, the actual names of peers in
6 a swarm are unknown, as the users are allowed to download and distribute under the cover of their
7 IP addresses.
8

9 16. The BitTorrent protocol is an extremely popular method for transferring data. The
10 size of swarms for popular files can reach into the tens of thousands of unique peers. A swarm will
11 commonly have peers from many, if not every, state in the United States and several countries
12 around the world. And every peer in the swarm participates in distributing the file to dozens,
13 hundreds, or even thousands of other peers.
14

15 17. The BitTorrent protocol is also an extremely popular method for unlawfully copying,
16 reproducing, and distributing files in violation of the copyright laws of the United States. A broad
17 range of copyrighted albums, audiovisual files, photographs, software, and other forms of media are
18 available for illegal reproduction and distribution via the BitTorrent protocol.
19

20 18. Efforts at combating BitTorrent-based copyright infringement have been stymied by
21 BitTorrent's decentralized nature. Because there are no central servers to enjoin from unlawfully
22 distributing copyrighted content, there is no primary target on which to focus anti-piracy efforts.
23 Indeed, the same decentralization that makes the BitTorrent protocol an extremely robust and
24 efficient means of transferring enormous quantities of data also acts to insulate it from anti-piracy
25 measures. This lawsuit is Plaintiff's only practical means of combating BitTorrent-based
26 infringement of the Video.
27
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ALLEGATIONS COMMON TO ALL COUNTS

19. At all times relevant hereto, Plaintiff was the exclusive rights holder with respect to BitTorrent-based reproduction and distribution of the Video.

20. The Video has been granted a Certificate of Registration from the United States Copyright Office (U.S. Copyright Reg. No. PA-1-725-120).

21. The torrent file used to access the copyrighted material was named in a manner that would have provided an ordinary individual with notice that the Video was protected by the copyright laws.

22. Plaintiff employs proprietary peer-to-peer network forensic software to perform exhaustive real time monitoring of the BitTorrent-based swarm involved in distributing the Video. This software is effective in capturing data about the activity of peers in a swarm and their infringing conduct.

23. Defendant, without Plaintiff's authorization or license, intentionally downloaded a torrent file particular to Plaintiff's Video, purposefully loaded that torrent file into his BitTorrent client, entered a BitTorrent swarm particular to Plaintiff's Video, and reproduced and distributed the Video to numerous third parties.

24. Plaintiff observed Defendant's activities in the torrent swarm specific to the Video and logged his IP address and the date and time of his activity.

COUNT I – COPYRIGHT INFRINGEMENT

25. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth fully herein.

26. Defendant's conduct infringes upon Plaintiff's exclusive rights of reproduction and distribution that are protected under the Copyright Act.

1 27. Defendant knew or had constructive knowledge that his acts constituted copyright
2 infringement.

3 28. Defendant's conduct was willful within the meaning of the Copyright Act:
4 intentional, and with indifference to the Plaintiff's rights.
5

6 29. Plaintiff has been damaged by Defendant's conduct, including but not limited to
7 economic and reputation losses. Plaintiff continues to be damaged by such conduct, and has no
8 adequate remedy at law to compensate the Plaintiff for all of the possible damages stemming from
9 the Defendant's conduct.

10 30. Plaintiff hereby reserves the right, pursuant to 17 U.S.C. § 504(c), to elect to recover
11 statutory damages for each infringement, in lieu of seeking recovery of actual damages.
12

13 31. As Defendant's infringement was intentional and willful, the Plaintiff is entitled to an
14 award of statutory damages, exemplary damages, attorneys' fees, and the costs of the suit.

15 **COUNT II – CIVIL CONSPIRACY**

16 32. Plaintiff hereby incorporates by reference each and every allegation contained in the
17 preceding paragraphs as if set forth fully herein.

18 33. In using the peer-to-peer BitTorrent file distribution method, Defendant engaged in a
19 concerted action with other unnamed individuals to reproduce and distribute Plaintiff's Video by
20 exchanging pieces of the Video file in the torrent swarm.
21

22 34. Defendant and his co-conspirators downloaded a torrent file, opened it using a
23 BitTorrent client, and then entered a torrent swarm comprised of other individuals distributing and
24 reproducing Plaintiff's Video. In participating in said conspiratorial network, Defendant agreed with
25 others to engage in a concerted tortious action in the network to reproduce and distribute Plaintiff's
26 Video.
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35. Participants in the torrent swarm have conspired to provide other individuals with pieces of the Video in exchange for receiving other pieces of the same Video to eventually obtain a complete copy of the file.

36. In furtherance of this civil conspiracy, Defendants committed overt tortious and unlawful acts by using BitTorrent software to download the Video from and distribute it to others, and were willful participants in this joint activity.

37. As a proximate result of this conspiracy, Plaintiff has been damaged, as is more fully alleged above.

JURY DEMAND

38. Plaintiff hereby demands a jury trial in this case.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests Judgment and relief as follows:

1) Judgment against Defendant that he has: a) willfully infringed Plaintiff's rights in federally registered copyrights pursuant to 17 U.S.C. § 501; and b) otherwise injured the business reputation and business of Plaintiff by Defendant's acts and conduct set forth in this Complaint;

2) Judgment in favor of the Plaintiff against Defendant for actual damages or statutory damages pursuant to 17 U.S.C. § 504, at the election of Plaintiff, in an amount to be ascertained at trial;

3) Order of impoundment under 17 U.S.C. §§ 503 & 509(a) impounding all infringing copies of Plaintiff's audiovisual works, photographs or other materials, which are in Defendant's possession or under his control;

4) On Count II, an order that Defendant is jointly and severally liable to Plaintiff in the full amount of the Judgment along the damages associated with the infringing activity of his co-conspirators on the basis of a common law claim for civil conspiracy to commit copyright

1 infringement; for an award of compensatory damages in favor of the Plaintiff and against
2 Defendants, jointly and severally, in an amount to be determined at trial;

3 5) Judgment in favor of Plaintiff against the Defendant awarding the Plaintiff attorneys'
4 fees, litigation expenses (including fees and costs of expert witnesses), and other costs of this action;
5 and
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7 6) Judgment in favor of the Plaintiff against Defendant, awarding Plaintiff declaratory
8 and injunctive or other equitable relief as may be just and warranted under the circumstances.
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13 Respectfully Submitted,

14 PRENDA LAW INC.
15

16 **DATED: November 20, 2011**

17 By: /s/ Brett L. Gibbs

18 Brett L. Gibbs, Esq. (SBN 251000)
19 Prenda Law Inc.
20 38 Miller Avenue, #263
21 Mill Valley, CA 94941
22 **blgibbs@wefightpiracy.com**
23 *Attorney for Plaintiff*
24
25
26
27
28

DEMAND FOR A JURY TRIAL

Plaintiff hereby demands a jury trial as provided by FRCP 38(a).

By: /s/ Brett L. Gibbs

Brett L. Gibbs, Esq. (SBN 251000)

Attorney for Plaintiff